

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

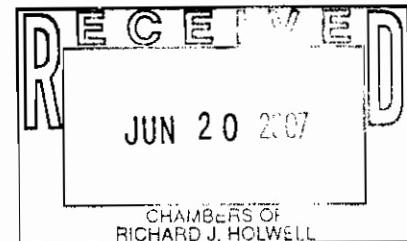
NEW YORK STATE RESTAURANT
ASSOCIATION,

Plaintiff,

- against -

NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York State Department of Health
and Mental Hygiene,

Defendants.



2007 Civ. 5710 (RJH)

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: 7/11/07
DATE FILED: 7/11/07

STIPULATION AND ORDER

WHEREAS, plaintiff New York State Restaurant Association filed a complaint on June 15, 2007; and

WHEREAS, plaintiff filed by order to show cause a motion for (i) a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure, preliminarily enjoining and restraining Defendants from enforcing New York City Health Code section 81.50 in violation of the First and Fourteenth Amendments; and (ii) a declaratory judgment under Rule 57 of the Federal Rules of Civil Procedure that New York City Health Code section 81.50 is preempted by the Nutritional Labeling and Education Act of 1990, 21 U.S.C. §§ 343, 343-a, and regulations promulgated thereunder by the Food and Drug Administration; and

WHEREAS, on June 15, 2007, the Court entered an order setting the following schedule: defendants' opposition papers are due on June 23, 2007 at 5:00 p.m.; any reply papers are due on June 26, 2007 at 12:00 p.m.; and a hearing is scheduled for June 27, 2007 at 5:30 p.m.; and

WHEREAS, the parties have agreed to a more extended briefing schedule; and

WHEREAS, no prior requests for an adjournment have been made.

NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED THAT:

1. Defendants' opposition papers shall be filed and served by hand by no later than 5:00 p.m. on July 5, 2007;
2. Defendants' memorandum of law in opposition shall not exceed thirty (30) pages in length;
3. Any reply papers shall be filed and served by hand by no later than 5:00 p.m. on July 19, 2007;
4. Enforcement of New York City Health Code section 81.50 ("sect on 81.50") shall be stayed until October 1, 2007, such that defendants shall take no steps to enforce section 81.50 against any restaurant or other entity prior to October 1, 2007, including but not limited to, issuing warning letters, notices of violation or violations, making statements on the New York City Department of Health's website or elsewhere indicating that restaurants or other entities are not in compliance with section 81.50, or assessing fines or penalties; and
5. The caption of this action is hereby amended to read as follows (the only change being the substitution of the word "City" for "State" in the title of Defendant Thomas R. Frieden):

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORKNEW YORK STATE RESTAURANT
ASSOCIATION,

Plaintiff,

- against -

2007 Civ. 5710 (RJH)

NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
of the New York City Department of Health
and Mental Hygiene,

Defendants.

IT IS HEREBY ORDERED that a hearing shall be held before the Honorable Richard J. Holwell at Room 17B, United States District Courthouse, 500 Pearl Street, New York, New York 10007, on the 25th day of July, 2007, at 5:00 p.m.

Dated: New York, New York
June 19, 2007

ARNOLD & PORTER LLP

By:

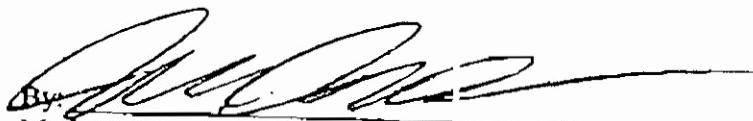
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*Counsel for Plaintiff
New York State Restaurant Association*

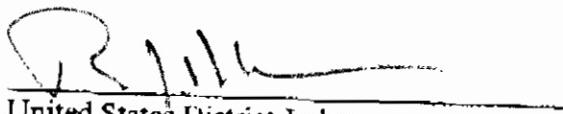
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By: _____
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Assistant Corporation Counsel

*Counsel for Defendants New York City Board of
Health, New York City Department of Health and
Mental Hygiene, and Thomas R. Frieden, In His
Official Capacity as Commissioner of the New York
City Department of Health and Mental Hygiene*

SO ORDERED:



United States District Judge

O/A SET for 07/25/07 @ 5:00 pm